IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2006

CORAM :

THE HONOURABLE MR.JUSTICE R.BALASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Criminal Appeal No.1239 of 2003

Deenan @ Deenadayalan .. Appellant/Accused

-vs-

State, rep. by the Inspector
of Police, P.3 Vysarpadi Police
Station, Chennai(Cr.No.152/1999) .. Respondent/Complainant

Appeal against the judgment of the learned Principal Sessions Judge, Chennai, in S.C.No.420 of 2001 dated 14.7.2003.

For Appellant : Mr.S.Ashok Kumar, S.C.
for Mr.Edwin Prabakaran

For Respondent : Mr.V.M.R.Rajendran,
Addl. Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by R.BALASUBRAMANIAN, J.)

The appellant in this appeal stands convicted under Sections 302, 316 and 450 of the Indian Penal Code. For the former offence, he stands sentenced to undergo imprisonment for life together with a fine of Rs.2,000/- carrying a default sentence; for the offence under Section 316 I.P.C., he stands sentenced to undergo seven years rigorous imprisonment together with a fine of Rs.1,000/- carrying a default sentence and for the last one, to undergo rigorous imprisonment for 3 years together with a fine of Rs.1,000/- carrying a default sentence. Hence, he is before this Court in this appeal. Heard Mr.S.Ashok Kumar, learned senior counsel appearing for the appellant and Mr.V.M.R.Rajendran, learned Additional Public Prosecutor appearing for the State.

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2. The prosecution case is that at about 12.30 p.m. on 19.2.99, the accused set fire to Vijayalakshmi by pouring kerosene on her in her house, as a result of which, she succumbed to the burn injuries on 23.2.99 and in the course of the same transaction, a quick child, which is found to be nine months old, was also done to death. Both the above referred to offences were committed by the accused after committing house trespass. To substantiate their case, the prosecution examined P.Ws.1 to 15, besides marking Exs.P.1 to P.25 and exhibiting M.Os.1 to 10. Let us state the prosecution case hereunder:-

P.W.1 is the husband of Vijayalakshmi (since deceased) and is a rickshaw puller by profession. Through Vijayalakshmi, he has a female child by name, Anu and he is living in the second floor of the multi-storeyed structure in Sundaram Main Road, Vyasarpadi, with his wife. The said portion belonged to Kanaga, who is the junior maternal aunt of Vijayalakshmi (since deceased) and he was there on a monthly rent of Rs.250/-. He knows the accused, who is none else than his wife's senior paternal aunt's grand son. The accused was residing in a nearby street and he often used to come home as a relative. A few months before the occurrence, the accused came home and his wife gave him coffee. While receiving the coffee tumbler, the accused caught hold of his wife's hand, which shocked him. Therefore, he and his wife advised the accused not to come home any more. Thereafter, the accused was often kidding her and this was told to him by his wife. Since the accused is a relative, they do not want to precipitate the matter. On the occurrence day, leaving his wife and daughter, Anu, he went to attend the marriage of his friend's sister and returned home at 3.00 p.m. There, he noticed a crowd near his house. Sujatha, the younger sister of his wife, informed him as to what happened and his wife had already been taken to Government Kilpauk Medical College Hospital and he proceeded to the hospital and enquired her. At that time, his wife told him that at about 12.30 p.m. on that afternoon, the accused made sexual advances to her and as his wife chased him out, the accused left threatening her and some time later, when she was asleep, the accused came home; poured kerosene and then set fire to her and thereafter, he ran away. His wife died at about 8.45 a.m. on 23.2.99.

3. P.W.10 is the Casualty Medical Officer in the Government Kilpauk Medical College Hospital at Chennai. When he was on duty in the hospital on 19.2.99, at about 1.40 p.m., a patient by name Vijayalakshmi with burn injuries was admitted in the burns ward. He enquired her as to how she sustained injuries, for which, she replied that her brother's son, Deenan (the accused) poured kerosene on her at 1.00 p.m. and then set fire to her and that he had done it on account of exchange of words. He entered the details in the case sheet. She was conscious. She had suffered 54% burn injuries. He commenced treating her and since he was of the opinion that her dying declaration must be recorded, he sent an intimation to the Magistrate. He also obtained the opinion of a Gynaecologist, who told him that there is a foetus of 36 weeks old. Vijayalakshmi died at about 8.40 a.m. on 23.2.99. Ex.P.9 is the death intimation and Ex.P.10 is the

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accident register. P.W.11 is the Sub-Inspector of Police in the investigating police station. On receipt of information over telephone that a patient by name Vijayalakshmi had been admitted in the hospital with burn injuries, he reached the hospital at 9.00 p.m. on 19.2.99. P.W.6, the duty doctor, identified the patient and ascertaining himself that Vijayalakshmi was in a fit and conscious state of mind, he recorded the statement given by her, in which he had taken her left thumb impression. Before taking her left thumb impression, he read over the contents to her and she affirmed the contents of the same as correct. P.W.6, the doctor, was by his side at that time. Ex.P.11 is the said statement. P.W.6 wanted the dying declaration of Vijayalakshmi be recorded by a Magistrate. P.W.6 is the medical officer in the Government Kilpauk Medical College Hospital. A patient by name Vijayalakshmi with burn injuries was admitted as an in-patient in the burns ward and he was treating her. At about 9.00 p.m. on 19.2.99, P.W.11 appeared in the hospital and proceeded to examine Vijayalakshmi (since deceased). P.W.6 was by his side when P.W.11 recorded the statement from Vijayalakshmi. He certified that Vijayalakshmi was in a fit and conscious state of mind at that time. Ex.P.3 is the certificate at the foot of Ex.P.11, which shows that the patient was fully conscious when the statement was recorded. Then, at 9.30 p.m., he sent an intimation to the Magistrate to record her dying declaration. Accordingly, between 10.15 p.m. and 10.45 p.m., the Metropolitan Magistrate recorded her dying declaration. P.W.6 was present by the side of the patient and he gave Ex.P.4, the certificate, which is found reflected at the foot of Ex.P.15, reading as hereunder:-

> " Patient was fully conscious and able to talk when the dying declaration was recorded."

P.W.12 is the XIV Metropolitan Magistrate, Chennai. On receipt of Ex.P.12, the requisition to record the dying declaration of the patient, he immediately reached the hospital, where he observed Vijayalakshmi admitted as an in-patient. P.W.6 identified the patient to him. Vijayalakshmi was conscious. There were three women by her side. By asking them to leave that place, P.W.12 examined Vijayalakshmi by asking her personal details and she gave answers in a coherent manner. He introduced himself to her as the Metropolitan Magistrate, which she understood. Then, satisfying himself from the answers given by Vijayalakshmi that she was in a fit and conscious state of mind, he examined her as to how she came to sustain the injuries and Vijayalakshmi answered each question one after the other and he had taken her left thumb impression in it. P.W.6 had certified her fit and conscious state of mind. Ex.P.14 is the said dying declaration. In that dying declaration, the patient had implicated the accused. The details of which, we will refer a little later.

4. P.W.11, the Sub-Inspector of Police, registered Ex.P.11 in his police station Crime No.152 of 1999 under Section 307 I.P.C. and prepared Ex.P.13, the printed F.I.R. He sent the express records to the Court as

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well as to the higher officials. P.W.14 is the investigating officer in this case. He collected the express records sent to him and commenced investigation. He went to the Government Kilpauk Medical College Hospital, where by examining Vijayalakshmi, he recorded her statement. He examined P.W.4 and her mother, Kanaga, who were outside the ward by recording their statements. On 20.2.99, he prepared Exs.P.17 to P.19, the rough sketch about the scene of occurrence. A little later in the morning, he prepared Ex.P.7, the observation mahazar, in the presence of P.W.9 and another. At 8.30 a.m., from the scene of occurrence, he recovered a multi-coloured half burnt bed spread – M.O.2, a multi-coloured towel – M.O.3, a green colour pillow cover – M.O.10, a piece of a light blue colour jeans pant – M.O.4, a black colour inner wear – M.O.5, a violet colour inner wear – M.O.6, a blue colour blouse – M.0.7, a bottle of a capacity of 750 ml – M.O.8 and a kerosene smelling match box – M.O.9 under a mahazar attested by the same witnesses. He examined witnesses and recorded their statements. He sent the case properties to the Court. At 12.00 noon on 21.2.99, he arrested the accused in the junction of Dr.Ambedkar Road and Stephens Road and examined him in the presence of P.W.5 and another and at that time, the accused gave a confession statement, the admissible portion of which is Ex.P.20. Pursuant to Ex.P.20, M.O.1 came to be recovered at 1.30 p.m. on the same day under Ex.P.1 mahazar attested by the same witnesses. At that time, he noticed that the accused had burn injuries on his left hand ring finger and on the posterior back side of his head. He sent the accused for medical treatment to Government Stanley Hospital with a medical memo. P.W.13 is the medical officer at the Government Stanley Hospital during the relevant time. At about 3.00 p.m. on 21.2.99, the accused was brought before him with a police medical memo by the Sub-Inspector of police in this case. The accused told him that at about 1.00 p.m. on 19.2.99 in the occurrence house, when a lady aged about 20 years was attempting to set fire to her after pouring kerosene, he tried to save her and at that time, he received the burn injuries. Ex.P.14 is the accident register issued by him.

5. P.W.2 is the brother of the deceased in this case. P.W.1's wife, (i.e.) the deceased, is his sister. He is working as a loadman in the railway good shed. The house of the deceased is in a walking distance from his place of work, which he can reach in half-an-hour. On the occurrence day afternoon by about 12.30 p.m. or so, he went to Vijayalakshmi's house. As he was nearing the house, he heard his sister's distress call from the second floor to save her. He immediately ran up the staircase and at that time, he saw the accused coming down the staircase. P.Ws.3, 4 and P.W.4's mother, Kanaga, also went with him to Vijayalakshmi's portion, where they found Vijayalakshmi in flames in her saree. They tried to put out the fire by pouring water. She was covered by a bed spread. He asked her as to what happened and she answered that the accused had set fire to her after pouring kerosene. He, P.Ws.3, 4 and P.W.4's mother, Kanaga, took Vijayalakshmi in an autorickshaw to the hospital. P.W.3 is a tailor by profession. He knows the accused. Kanagammal's house (P.W.4's mother) is very close to his tailoring shop.

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It consists of two floors. In the first floor, there was a family of a police personnel and at the second floor, Vijayalakshmi (since deceased) was staying with her husband and her child. He remembers that the occurrence took place in the year 1999, but does not remember the date and he did not know the details of the incident. However, he would add that he was working in his shop around 1.00 p.m. and at that time, he heard 'SOS' from the upstairs portion and people in the lower floor started running up. He came out and saw people going up and immediately thereafter, Vijayalakshmi was brought down from the upstairs portion. They were requesting him to secure an autorickshaw and in the autorickshaw, Vijayalakshmi was transported to the hospital and he also accompanied her by taking his seat in the front by the side of the auto driver. In the auto, Vijayalakshmi was complaining that she had been set fire to (reference is to a male and not by the name). P.W.4's mother is Kanaga. Her mother owns a two-storeyed structure and at the ground floor, she lives with the mother and at the first floor, there was a family of a police personnel. P.W.8 is the wife of the said police personnel. In the second floor, Vijayalakshmi is living with her family and Vijayalakshmi is her cousin. She knows the accused. On the occurrence day, when she was in her house, she heard a commotion outside her house. She, along with P.W.8, went upstairs to the house of Vijayalakshmi, where they found her in flames. They tried to cover her with a saree. Since Vijayalakshmi was pregnant, they were under the impression that probably she is having labour pain and that is why she is shouting. P.Ws.4 and 8 brought Vijayalakshmi down, where P.W.3 was also there. P.Ws.4, 8 and 3 took Vijayalakshmi in an autorickshaw to the hospital. Enroute, Vijayalakshmi was saying something, which she did not listen to. P.W.5 witnessed the arrest of the accused as spoken to by the investigating officer; his examination by the investigating officer; recording his confession statement, the admissible portion of which we have already referred to. He also spoke about the recovery of M.O.1 under Ex.P.1. He admitted his signature in Ex.P.1 as Ex.P.2. P.W.8 is the wife of the police personnel, who is living in the first floor of the building. She would also state, as spoken to by P.W.4, the details of the building and she running up towards the house of Vijayalakshmi along with P.W.4. She would then depose that as she was climbing up, she saw the accused coming down the staircase. She would state that in the autorickshaw, Vijayalakshmi stated that the accused, after pouring kerosene on her, set fire to her. P.W.9 witnessed the preparation of Ex.P.7, the observation mahazar and recovery of M.Os.2 to 9 under Ex.P.8.

6. P.W.14 was continuing his investigation further by examining the witnesses and recording their statements. As already stated, after arresting the accused, he sent him for medical treatment. He received the death intimation that Vijayalakshmi died at about 8.40 a.m. on 23.2.99 and accordingly, altered the section of offence from one under Section 307 I.P.C. to 302 I.P.C. and prepared Ex.P.21, the altered express F.I.R. He went to the hospital mortuary and conducted inquest over the dead body on 23.2.99 from 11.45 a.m. till 3.00 p.m. in the presence of witnesses and

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panchayatdars. Ex.P.22 is the inquest report. Then, he sent a requisition through a police constable for post-mortem. P.W.7 is the doctor, who did post-mortem on the dead body on receipt of the requisition. He noted several symptoms on the dead body during the time when he conducted post-mortem and the symptoms are noted in Ex.P.6, the post-mortem report. The symptoms as noted therein are as hereunder:-

" Infected deep burns covered withpus seen over abdomen. Left upper limbs, left side of the back of the trunk, both lower limbs fully except front of both legs and both buttocks.

Hyoid bone : Intact
Lungs : Pale and oedematous.
Heart : Contained fluid blood in all chambers.
Brain : Surface vessels were congested.
Stomach : contains 100 ml. of thick yellow fluid without any specific odour.
All the other internal organs : Pale on cross section.
Uterus : contained 34 weeks size male foetus.
Bladder : contains 100 ml. of urine.

The doctor is of the opinion that death would have occurred due to complications of burns - septicaemia. P.W.14 sent the case properties to the Court with a requisition to subject the same for chemical examination. Ex.P.23 is the requisition given by him. As an enclosure to Court's letter, Ex.P.24, the case properties were sent to the laboratory by the Court. Ex.P.25 is the report received from the laboratory. P.W.14 was succeeded by P.W.15, who, after verifying the investigation already done by P.W.14, filed the final report in Court against the accused on 25.8.99 under Sections 302 and 316 of the Indian Penal Code. When the accused was questioned under Section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against him, he denied those materials as false and contrary to facts. He neither let in any oral evidence nor brought in any documentary evidence.

7. Mr.S.Ashok Kumar, learned senior counsel appearing for the appellant, would contend that though there are several dying declarations besides the judicial dying declaration recorded by the learned Metropolitan Magistrate and a written complaint given by Vijayalakshmi herself to the police, yet, from the manner in which those declarations are shown to have been made, it is seen that they are surrounded by suspicious circumstances and therefore, this Court may be in a position to disbelieve the entirety of the dying declaration in whatever form it is and acquit the accused. In Ex.P.11, the complaint given to the police and in Ex.P.14, the judicial dying declaration, Vijayalakshmi had not mentioned about the presence of P.W.2, who is none else than her brother, as a person, who knows about the crime or in any event, as a person to whom she had given a dying declaration earlier. This omission in Exs.P.11 and P.14 would enable this Court not only to doubt the evidence of P.W.2,

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but also to doubt Exs.P.11 and P.14. Ex.P.14 can also be doubted because admittedly the relatives of Vijayalakshmi were by her bed side when the learned Metropolitan Magistrate reached the hospital to record the dying declaration and therefore, tutoring the mind of Vijayalakshmi to implicate the accused is apparent on the face of record. Vijayalakshmi could not have given the oral dying declaration at all, as spoken to by P.W.2 and other witnesses, since P.Ws.3 and 4 - who are neutral witnesses and who admittedly accompanied the injured to the hospital in the same autorickshaw, did not disclose that Vijayalakshmi at any point of time on her way to the hospital from the house gave any dying declaration. This assumes considerable importance and therefore, in the face of their evidence, viz., P.Ws.3 and 4, the oral dying declaration relied upon by the prosecution must be doubted. The presence of the accused, namely, the accused coming down the stairs from the house of Vijayalakshmi, is denied by P.W.4, who had admittedly gone up the staircase to reach the house of Vijayalakshmi and therefore, the evidence of P.W.2, which is contra to the evidence of P.W.4 must be disbelieved, which means the presence of the accused at the time of commission of crime in the house is highly doubtful. To sum up his arguments, learned senior counsel would contend that there is absolutely no legal evidence to connect the accused with the crime and therefore, the judgment under challenge has to be set aside. Mr.V.M.R.Rajendran, learned Additional Public Prosecutor, in meeting these points, would submit that there are so many dying declarations on record in this case and no compelling reasons are made out either to disbelieve all or any one of them. The dying declarations are consistent, namely, the involvement of the accused and therefore, this Court may sustain the judgment under challenge. The learned State counsel took pains in taking us through the entire evidence on record to show that there are no suspicious circumstances at all in any of the oral dying declarations stated to have been given by Vijayalakshmi not only to the individuals, but also to the doctors, to the Magistrate as well as in Ex.P.11. Therefore, the learned State counsel argued for confirming the judgment under challenge.

8. Having regard to the submissions made by the learned senior counsel for the appellant and the learned Additional Public Prosecutor, we went through the entire materials on record with utmost care and caution. There is no dispute, as contended by the learned senior counsel for the appellant, that there is no direct evidence to the crime and the entire case of the prosecution rests on a number of dying declarations. The Supreme Court, in a recent judgment, held that if there are more than one dying declaration and the dying declarations run contra to each other, then the Court while evaluating the said dying declarations would not be committing any error in discarding those dying declarations from the purview of consideration. It must be remembered that in that case, the Supreme Court found that the dying declarations were running contra to each other on a material aspect. Therefore, the test is whether the dying declarations are cogent and convincing and if so, whether they are reliable and trustworthy to be acted upon. If the dying declarations

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satisfy all the above referred to requirements of law, then the Court may not have any difficulty in accepting those declarations and in other words, it has no option to reject them. Having that principle in mind, we went through the entire records.

9. P.W.10 is the Casualty Medical Officer in the Government Kilpauk Medical College Hospital, before whom at about 1.40 p.m. on 19.2.99, Vijayalakshmi with burn injuries was admitted. The charge against the accused is that around 1.00 p.m. on that day he committed the crime. Therefore, within a very short time, Vijayalakshmi was admitted in the hospital and she was examined by P.W.10. He had categorically stated that when he enquired Vijayalakshmi as to how she came to sustain injuries, back came the answer that it is the accused, who is none else than her brother's son, had set fire to her at about 1.00 p.m. after pouring kerosene. Ex.P.10 is the accident register, which is the contemporary record prepared at that time when Vijayalakshmi was admitted in the hospital. In Ex.P.10 also, there is a noting that Vijayalakshmi sustained burn injuries due to homicidal attempt made by a known person at about 1.00 p.m. on 19.2.99 in the address mentioned therein. The address mentioned therein is the house, in which Vijayalakshmi was living along with her husband. Ex.P.10 also shows that Vijayalakshmi was brought before him by Baskaran (shown to be the neighbour and examined in this case as P.W.3). Surprisingly, we find that P.W.10 had not been cross examined at all by the defence on his evidence that Vijayalakshmi implicated the accused in her dying declaration for the burn injuries found on her. Therefore, the evidence of P.W.10 about the disclosure made by Vijayalakshmi to him stands unrebutted and therefore, we may not have any difficulty at all in accepting the evidence of P.W.10 as a person to whom Vijayalakshmi made an oral dying declaration at the earliest point of time implicating the accused. Of course, prior to reaching the hospital, Vijayalakshmi, enroute from her house to the hospital in the autorickshaw, is stated to have been accompanied by P.Ws.2, 3, 4 and P.W.4's mother, Kanaga. However, P.W.3, in his evidence, had not said that Vijayalakshmi in the autorickshaw implicated the accused by his name as the person responsible for the burn injuries. But, however, his evidence shows that Vijayalakshmi was shouting in the autorickshaw that she had been set fire to and the words expressed by her show that she was indicating the act of a male. P.W.4 though admitted that she was also travelling in that autorickshaw was fair enough to say that she did not notice what Vijayalakshmi was saying enroute. How far a person could observe what is happening around him or her would depend upon the person, who is actually accompanying the injured. Such capacity to observe will vary from individual to individual and when all of them were travelling in anguish to reach the hospital at the earliest point of time, we find nothing unusual in P.W.4 not noticing or not listening as to what Vijayalakshmi was telling at the time of her travel. Therefore, from the evidence of P.W.4, as referred to above, namely, that she did not notice as to what Vijayalakshmi was saying to others in the autorickshaw, it cannot be held, as submitted by the learned senior counsel, that Vijayalakshmi could not

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have given and did not give any dying declaration at all on her way from the house to the hospital. We have also noted that P.W.3's evidence show that Vijayalakshmi implicated a male without disclosing his name or his identity as the person responsible for the burn injuries on her. Now, we have the evidence of P.W.8. She is none else than the person who is living in the first floor of the building in which the deceased Vijayalakshmi was living in the second floor. Her evidence shows that even when Vijayalakshmi was brought down from the second floor, she told her that the accused poured kerosene and then, set fire to her. Therefore, even at that point of time, namely, within a short time, after P.W.8 had access to Vijayalakshmi's house that disclosure had come, which implicates the accused as the person responsible for the crime. From her evidence in cross, we do not find any single circumstance from which we can disbelieve her evidence in chief that Vijayalakshmi gave an oral dying declaration to her. Therefore, we have the evidence of P.Ws.3 and 8 to find out as to whether before reaching the hospital, Vijayalakshmi had given any dying declaration. The evidence of P.W.8 do show definitely that Vijayalakshmi had implicated the accused in the crime in the dying declaration given to her and P.W.3's evidence shows that in the dying declaration Vijayalakshmi was implicating a male as the person responsible for the crime on her. Then, we have the evidence of P.W.2, who is none else than the elder brother of Vijayalakshmi. His evidence also shows that the moment he reached the house (he was already on his way to the house of Vijayalakshmi), on enquiry, Vijayalakshmi told him that the accused set fire to her after pouring kerosene. So, this evidence of P.W.2 is in total corroboration to the oral evidence of P.W.8. Therefore, we reiterate once again by stating that to P.Ws.2 and 8, Vijayalakshmi, without any waste of time and in fact at the quickest possible time after the crime on her, had given a declaration that it is the accused and the accused alone, who had poured kerosene on her and then, set fire. This declaration to P.Ws.2 and 8 is followed by the declaration made by Vijayalakshmi to P.W.10, the doctor, who examined her at about 1.40 p.m. Apart from the evidence of P.Ws.2 and 8, which we have already discussed above, we have the evidence of P.W.13, the doctor, who examined the accused on his arrest. To the doctor, the accused told that he came to sustain the injury when he was trying to save a woman in the address mentioned in Ex.P.14 when she was attempting to set fire. This is an admission on the part of the accused to P.W.13 about his presence at the scene of occurrence and this can be definitely made use of against him under Section 21 of the Evidence Act.

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10. Let us now apply our mind to the judicial dying declaration of Vijayalakshmi recorded by P.W.12 and whether there are any suspicious circumstances in recording the said statement. Of course, it is true, as pointed by the learned senior counsel for the appellant, that P.W.12's evidence shows that when he reached the hospital, the relatives of Vijayalakshmi, namely, three women, were by her bed side and after asking them to move away, he commenced the proceedings. In this case, it must be noted, as already referred to earlier by us, that immediately after P.Ws.2

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and 8 had access to Vijayalakshmi's house, she, in certain unmistaken terms, had implicated the accused as the person responsible for the crime. One can understand if such an information is not available to P.Ws.2 and 8 at the earliest point of time. In other words, if the prosecution was not aware as to who is responsible for the crime committed on Vijayalakshmi, then probably the prosecution party would be loitering to find out who the culprit is and if they do not get any clue, probably their mind may work in implicating a person who is not well disposed of towards them. But, in this case, the evidence of P.W.2 shows, besides the oral dying declaration given by Vijayalakshmi to him, that he saw the accused coming down the stairs as he was going up to reach the house of Vijayalakshmi. P.W.8's evidence also shows the above fact. Simply because P.W.4, to a question put to her by the Court as to whether she saw the accused at that time, she answered in the negative, it does not necessarily lead us to hold that the evidence of P.Ws.2 and 8 that they saw the accused coming down the stairs cannot be believed. When a young woman is in flames and when she is crying for help, which attracts the attention of several people, then everybody would start running to reach the victim. In that process, especially when they were in the state of mind in which they were placed at that time, one might notice people coming opposite to them and one might not notice the same fact. It all depends upon the power of memory and the power of observation of each individual and as to how the brain starts working in meeting such an emergent situation. At the risk of repetition, we state one may be directly running to reach the victim unmindful of what is coming opposite to him and other, by chance, would have noticed persons coming in the opposite direction while reaching the scene of occurrence. If the evidence of P.W.4 is appreciated in the context of the above anticipated mental balance of an individual placed in such a situation, then her evidence that she did not notice the accused would not necessarily mean that the accused was not seen there at all and therefore, the evidence of P.Ws.2 and 8 regarding the presence of the accused at that time must be disbelieved. Therefore, to sum up, we state that within a short time after the commission of crime, P.Ws.2 and 8 came to know that it is the accused and the accused alone who committed the crime on Vijayalakshmi and this statement of Vijayalakshmi gets corroborated by the fact that both of them saw the accused coming down the stairs while both of them were going up. If that is so, the prosecution was clear even at the earliest point of time as to who the accused is. In that background, the presence of three women by the bed side of Vijayalakshmi in the hospital when P.W.12, the Metropolitan Magistrate, reached the hospital to record the dying declaration of Vijayalakshmi, means to us nothing. In other words, it cannot be held by any stretch of imagination that the three women, stated to be present by the side of Vijayalakshmi, as spoken to by P.W.12, had tutored Vijayalakshmi to implicate the accused in this case and in fact, there is no scope or chance for it. Having concluded so, namely, the presence of three women by the side of Vijayalakshmi when P.W.12 went to record the dying declaration would not vitiate the recording of the dying declaration itself. We perused the evidence of P.W.12 and the dying declaration

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recorded by him. He found Vijayalakshmi having clarity in mind and thought; she understood whom he was; and that she was able to answer the question after question put to her. P.W.12's evidence also shows that P.W.6, the duty doctor, certified the fitness of Vijayalakshmi. We have already referred to the certificate of P.W.6 found entered at the foot of Ex.P.14. P.W.12's evidence shows that before recording, he asked the relatives to move away. From a reading of Ex.P.14, we see that Vijayalakshmi implicated the accused in the crime.

11. In addition to the above, we applied our mind to the complaint given by Vijayalakshmi herself to P.W.11, the Sub-Inspector of Police. In recording that complaint also, we do not find any vitiating circumstances. One thing is certain from all the dying declarations, namely, the oral dying declaration; judicial dying declaration and the complaint given by Vijayalakshmi herself which, later on assumed to be that of a dying declaration on her death, are consistent in pointing out the guilt of the accused alone and not leaving any room to doubt his involvement. For all the reasons stated above, we do not find any reason much less compelling reason to disbelieve the evidence of P.Ws.2 and 8 regarding the oral dying declaration of Vijayalakshmi given to them; the evidence of P.W.12, the Metropolitan Magistrate, who recorded the judicial dying declaration, Ex.P.14 and P.W.11, the Sub-Inspector of Police, who recorded Ex.P.11. As already stated, these dying declarations establish the involvement of the accused in pouring kerosene and setting fire to Vijayalakshmi, who later on died. We have already referred to the medical evidence available in this case, namely, P.Ws.6, 7 and 10, which unerringly show that Vijayalakshmi was admitted in the hospital with burn injuries; she was under intensive treatment and her death was due to complications arising out of such burn injuries (i.e.) septiceamia. Therefore, the conviction under Section 302 I.P.C. has to be sustained and it is, accordingly, sustained. The medical evidence further shows that the foetus in the womb of Vijayalakshmi was 36 weeks old. The evidence also shows that the accused trespassed into the house of Vijayalakshmi and committed the crime. Therefore, the conviction under Sections 316 and 450 I.P.C. is also based on legal evidence.

12. For all the reasons stated above, we do not find any illegality in the judgment under challenge as the conclusion of guilt arrived at by the Court of Sessions is based on legal material. As a result of the above, we find that the judgment under challenge is liable to be sustained and accordingly, it is sustained. The appeal is dismissed.

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Principal Sessions Judge, Chennai.

2.The District Collector, Chennai.

3.The Director General of Police, Chennai.

4.The Public Prosecutor, High Court, Madras.

5.The Inspector of Police, P.3 Vyasarpadi Police Station,Chennai.

6.The Superintendent, Central Prison, Vellore.

+ one cc to Mr A.Edwin Prabakar, Advocate SR 15995

NG(CO)
CGS/12.4

C.A.No.1239 of 2003

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